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MICHIGAN LAW REVIEW

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NOTE AND COMMENT

THE LAW SCHOOL.—Few changes in the personnel of the law faculty are to be noted. Mr. Gustav Stein, whose efficient work for two years as an instructor had been so appreciated that he had been promoted to an assistant professorship, resigned shortly after Commencement, and Mr. Evans Holbrook, who was graduated here in 1900 and has practiced law in Chicago for several years, has accepted an appointment to the vacancy caused by Mr. Stein's resignation.

Registration of students is not yet completed and the publication of particulars concerning the enrollment will be postponed till our next issue. The number of students at the present time is greater than that at the corresponding date of last year.

THE NEGOTIABLE INSTRUMENTS LAW.—Those disinterested lawyers who have been working for uniform legislation concerning important branches of the law are to be congratulated on the fact that the Negotiable Instruments Law is now in force in more than three-fifths of the States. During the last few months this law has been given effect in Kansas, Michigan, Missouri, Nebraska and Wyoming and the prophecy of its advocates that before many

years it would be accepted by all the States seems likely soon to be accomplished. Its enactment in Michigan was due largely to the efforts of Mr. George W. Bates, of the Detroit Bar.

UNAUTHORIZED OPERATION BY PHYSICIAN.—A case of interest involving the question of a patient's consent to a surgical operation was recently before the Supreme Court of Minnesota, *Mohr v. Williams*, 104 N. W. Rep. 12. The defendant, a physician and surgeon of standing and character in the profession, who made the disorders of the ear a specialty, was consulted by the plaintiff for a trouble in her right ear. At her request, he made an examination of that organ for the purpose of ascertaining its condition. He informed the plaintiff of the result of the examination, and advised an operation. At the same time he made a partial examination of the left ear, but owing to the presence therein of foreign substances, did not attempt a diagnosis, and apparently offered no suggestions as to the course that should be taken in regard to that ear. The plaintiff, after consulting with her family physician and after one or two further consultations with the defendant, decided to submit to the operation that the defendant had advised. At this time she had not been informed that her left ear was in any way diseased and understood that the operation was to be confined to the right. After the patient was under the influence of the anæsthetic, the defendant made a thorough examination of the left ear and found its condition to be much more serious than that of the right ear. This was called to the attention of the family physician of the plaintiff, who was present at plaintiff's request, and who confirmed the diagnosis of the defendant. Upon a further examination of the right ear, it was found that its condition was less serious than the defendant had supposed, and he thereupon concluded to and did operate upon the left ear instead of the right, intending, after the operation, to give other treatment to the right ear. The operation, it appears, was performed with skill and was in every way successful. But it was claimed by the plaintiff that her hearing was impaired by the operation, and that, as it was done without her consent, it was wrongful and unlawful and constituted an assault and battery. The trial in the court below resulted in a verdict for the plaintiff of \$14,322.50. The defendant appealed from an order denying his motion for judgment notwithstanding the verdict, and the plaintiff from an order granting a new trial on the ground that the verdict was excessive. The Supreme Court sustained the trial court upon both contentions, holding in regard to the contention of the defendant that he was entitled to judgment notwithstanding the verdict that he had no authority to perform the operation without the consent of the plaintiff, either express or implied; that no express consent appearing, whether it should be implied from the circumstances of the case, was a question of fact for the jury; and that the operation was wrongful and unlawful, and constituted an assault and battery, if it was not authorized by the express or implied consent of the plaintiff.

The court was undoubtedly correct in its conclusions. Consent to a surgical operation is necessary. If not laboring under such disability as would make an intelligent consent impossible, it is for the patient to decide whether or not